

### **REMARKS**

Claims 3, 4, 6-8, 13-19, 21-24, and 56-65 are cancelled without prejudice to their later prosecution in this or another application. Claims 2, 5, 9, and 28-55 were previously cancelled.

Applicant has amended herein claims 1, 10, 11, 20, 25-27. Since the amendments are reasonably conveyed by the specification and original claims, there is no issue of new matter.

Applicant notes with appreciation the Office's indication that claims 6-8, 10-12, 25-27 would be allowable if rewritten in independent form. The currently pending claims are drawn to the subject matter of those claims.

Upon entry of this amendment, Claims 1, 10-12, 20, and 25-27 are pending.

### **Election/Restriction**

Applicant thanks the Examiner for acknowledging the election of the subject matter of Group VI.

### **Double Patenting**

Claims 1, 3, 4, 6-8, and 10-27 are rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-51 of U.S. Patent No. 7,176,222. Applicant is filing herewith a terminal disclaimer, which has been signed by an attorney of record in compliance with 37 C.F.R. § 1.321(c). This terminal disclaimer is being filed for the purpose of expediting prosecution and should not be construed as an acquiescence to double patenting.

Claims 1, 3, 4, 6-8, and 10-27, are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-30, 43, and 56-59 of copending Application No. 10/890,829. Applicant is filing herewith a terminal disclaimer, which has been signed by an attorney of record in compliance with 37 C.F.R. § 1.321(c). This terminal disclaimer is being filed for the

purpose of expediting prosecution and should not be construed as an acquiescence to double patenting.

Applicant respectfully submits that the terminal disclaimers overcome the rejection of claims 1, 3, 4, 6-8, and 10-27 under the judicially created doctrine of double patenting. Accordingly, Applicant respectfully requests that the double patenting rejection of claims 1, 3, 4, 6-8, and 10-27 be withdrawn.

**Rejections under 35 U.S.C. §112**

Claims 1, 3, 4, 13-14, 16, and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Office's rejection is based on Applicant's use of the terms "optionally substituted" and "substituted", alleging that the identity of the substituents is unclear. Currently pending claim 1 recites "R<sup>1.1</sup> is . . . which is optionally substituted with an additional lower alkoxy or lower alkoxyalkyl ring substituent;" and "R<sup>2</sup> is . . . substituted with one or two substituents chosen from lower alkoxy and lower alkyl." In each instance, Applicant clearly states the identity of the substituents. For at least that reason, Applicant respectfully requests the Office withdraw its rejection to claim 1. The remaining rejected claims (i.e., claims 3, 4, 13-14, 16, and 21-23) have been cancelled, as such the rejection of those claims is moot.

Claims 1, 3, 4, 13-19, 21-24, 28 and 56-59 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while allegedly being enabling for making a few of the possible structures of Formula I, allegedly does not reasonably provide enablement for plethora of possible structures encompassed by the Formula I. Without addressing the merits of the Office's rejection and solely to expedite prosecution and timely allowance of the claims, Applicant notes that the currently pending claims are drawn to subject matter that the Office has indicated is properly enabled. (See September 7, 2007 Office Action at page 7). Withdrawal of the Office's rejection is respectfully requested.

**Rejections under 35 U.S.C. §102**

Claims 1 and 13-24 and 56-59, are rejected under 35 U.S.C. 102(b), as being allegedly anticipated by the prior art. The Office cites the following references as describing compounds where  $R^2$  is aryl or substituted aryl: *J.R. Geigy A.G.* (GB 921682), *Jeffcoat et al.* (STN Accession number 1977:462295), *Parg et al.* (EP 27965), *Dumas et al.* (WO 99/32106), *Parg et al.* (EP 81142), *Kempton et al.* (STN Accession number 1984:510849), *Riedl et al.* (WO 00/041698), *Bender et al.* (US 6,635,641) and *Dumas et al.* (WO 02/062763). Applicant respectfully traverses this rejection. The currently pending claims define  $R^2$  as pyridinyl or pyridinyl substituted with one or two substituents chosen from lower alkoxy and lower alkyl. In other words,  $R^2$  does not encompass aryl or substituted aryl. As such, all elements of the present claims are not found in the cited references. For at least that reason, Applicant respectfully requests the rejection be withdrawn.

Additionally, the Office cites the following references as describing compounds where  $R^2$  is cycloalkyl: *Parg et al.* (EP 81142), *Parg et al.* (DE 3147879) *El-Sharief et al.* (STN Accession number 1987:549199), and *Bender et al.* (US 6,635,641). Applicant respectfully traverses this rejection. As noted above, the currently pending claims define  $R^2$  as pyridinyl or pyridinyl substituted with one or two substituents chosen from lower alkoxy and lower alkyl. Thus,  $R^2$  does not encompass cycloalkyl. As such, all elements of the present claims are not found in the cited references. For at least that reason, Applicant respectfully requests the rejection be withdrawn.

The Office also cites *Chambers et al.* (US 5,556,969) and *Carson et al.* (US 4,672,066) as describing compounds where X is lower-alkylene-O. Additionally, *Finch et al.* (WO 93/14074) is cited for describing compounds where X is lower-alkylene-S. Finally, *Dumas et al.* (WO 99/32111) is cited for describing compounds where X is S. Applicant respectfully traverses these rejections. The currently pending claims define X as O. Thus, X does not encompass lower-alkylene-O, lower-alkylene-S or S. As such, all elements of the present claims are not found in the cited references. For at least that reason, Applicant respectfully requests the rejection be withdrawn.

Further, the Office cites *Dumas et al.* (US 2002065296) as describing compounds where  $R^2$  is substituted quinoline. Applicant respectfully traverses this

rejection. The currently pending claims define  $R^2$  as pyridinyl or pyridinyl substituted with one or two substituents chosen from lower alkoxy and lower alkyl. Thus,  $R^2$  does not encompass substituted quinoline. As such, all elements of the present claims are not found in the cited references. For at least that reason, Applicant respectfully requests the rejection be withdrawn.

Further, the Office cites *Malik et al.* (WO 03/059258) as describing compounds where  $R^{1.3}$  is heterocyclyl. Applicant respectfully traverses this rejection. The currently pending claims define  $R^{1.3}$  as fluoro. Thus,  $R^{1.3}$  does not encompass heterocyclyl. As such, all elements of the present claims are not found in the cited references. For at least that reason, Applicant respectfully requests the rejection be withdrawn.

Finally, the Office cites *Gaster* (WO 98/50346) for the description of compounds where  $R^2$  is substituted heteroaryl. Applicant respectfully traverses this rejection. For the particular compound referenced by the Office, however,  $R^2$  is aryl substituted with heteroaryl. The currently pending claims define  $R^2$  as pyridinyl or pyridinyl substituted with one or two substituents chosen from lower alkoxy and lower alkyl. Thus,  $R^2$  does not encompass aryl substituted with heteroaryl. As such, all elements of the present claims are not found in *Gaster*. For at least that reason, Applicant respectfully requests the rejection be withdrawn.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

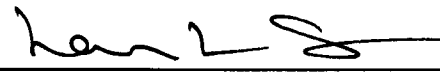
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Date: November 30, 2007

By: \_\_\_\_\_



Lauren L. Stevens  
Reg. No. 36,691

Tel: (650) 849-6614  
Email: lauren.stevens@finnegan.com